



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 14 2010

Charles W. German, Esq.
Rouse Hendricks German May
1010 Walnut, Suite 400
Kansas City, MO 64106

RE: MUR 6249
Karen Pletz

Dear Mr. German:

On February 2, 2010 and August 16, 2010, the Federal Election Commission notified your client, Karen Pletz, of a complaint and its supplement alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaint and its supplement were forwarded to your client at that time.

Upon further review of the allegations contained in the complaint and its supplement, and information supplied by your client, the Commission, on October 19, 2010, found that there is reason to believe Karen Pletz violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Act. Further, on December 9, 2010, the Commission approved the attached Factual and Legal Analysis, which sets forth the basis for the Commission's determination.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Margaret Ritzert or Peter Reynolds, the attorneys assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Matthew S. Petersen
Chairman

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Karen L. Pletz

MUR: 6249

I. GENERATION OF MATTER

This matter was generated by a complaint, which was subsequently amended, filed by Kansas City University of Medicine and Biosciences. See 2 U.S.C. § 437(g)(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Kansas City University of Medicine and Biosciences is an incorporated, non-profit osteopathic medical school in Kansas City, Missouri. Karen Pletz, who is an attorney, was the University's President and CEO from 1995 to 2009.

On September 26, 1999, Ms. Pletz wrote a memorandum to Dr. Jack Weaver, then Chairman of the Board of Trustees (now deceased), suggesting that the University provide her with additional compensation so as to reimburse her for expenses such as political contributions. Complaint at 2. The memorandum first clearly acknowledges that the University is a non-profit corporation prohibited from making political contributions, and then recommends that the University provide Ms. Pletz with a \$42,000 lump-sum payment and a \$42,000 increase to her salary for the next year to personally make the political contributions. Complaint Exhibit A ¶¶ 2-4. Ms. Pletz states that, "This will enable [me] to participate in a meaningful way, beginning now, in an important election year, and will also offset the additional tax involved, so that [I] am not penalized personally for work-related efforts." *Id* at ¶ 4. Ms. Pletz further recommends that her additional compensation be characterized as a "housing allowance," so that it will be added

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1 to her compensation as a separate benefit component, taxable to her, but enabling her to use the
2 funds for the political requirements of her job. *Id* at ¶ 5.

3 Minutes of a September 27, 1999 meeting of the University's Compensation and Benefits
4 Committee and an October 8, 1999 Executive Committee meeting reflect approval of a lump-
5 sum retroactive adjustment to Ms. Pletz's salary and an increase in her annual salary, both in the
6 amount of \$42,000.¹ Complaint Exhibit B at 2 and Exhibit C at 2-4. Neither set of minutes
7 includes any specific reference to the September 26, 1999 memorandum or any specific
8 discussion of the reason for the salary adjustments, except that Ms. Pletz's compensation should
9 recognize her special efforts and responsibilities as both a Chief Executive and a community
10 leader. *Id*. Finally, an October 8, 1999 Personnel Action Form signed by Dr. Jack Weaver and
11 subsequent Earnings Statements for Ms. Pletz confirm that Ms. Pletz received the funds.
12 Complaint Exhibits E, F, and G.

13 The funds paid to Ms. Pletz in order to make political contributions took the form of a
14 salary increase in 1999 and a "leadership stipend" from 2002 through 2009. Although Ms. Pletz
15 received \$42,000 in 1999, her annual leadership stipend grew to \$195,000 by the time her
16 employment was terminated in 2009. Complaint at 3 and Response Exhibit 8.

17 From 1998 through 2009, Ms. Pletz made the following \$15,700 in federal political
18 contributions, \$6,200 of which is still within the statute of limitations:

¹ The University's internal investigation has raised questions about the accuracy and authenticity of Executive Committee meeting minutes. Although the University is still examining records prior to 2006, it believes that Ms. Pletz forged several of the Executive Committee meeting minutes between 2006 and 2008 in which her leadership stipend was purportedly approved, and the meetings did not actually occur. Complaint at 3-4. Although the minutes may have been forged, Ms. Pletz still received the stipend they purported to approve. See Complaint Exhibits H and I; see also Response at 4. Counsel have made no determination as to the authenticity of meeting minutes prior to 2006.

Table 1. Federal Contributions by Karen Pletz

Date	Recipient	Contribution
8/25/1998	Missourians for Bond	\$1,000
12/3/1999	Carnahan for Senate	\$1,000
7/24/2000	Greg Musil for Congress	\$500
10/17/2000	Missouri 2000	\$1,000
10/17/2000	Carnahan for Senate	\$1,000
2/23/2004	Missourians for Bond	\$2,000
2/23/2004	Missourians for Bond	\$2,000
3/31/2004	Cleaver for Congress	\$1,000
6/16/2006	Talent for Senate	\$1,000
9/11/2006	Hulshof for Congress	\$250
6/28/2007	Kay for Congress	\$2,300
6/30/2007	Missourians for Bond	\$1,150
11/9/2007	Friends of Bennie Thompson	\$500
3/31/2008	Kay for Congress	\$500
7/1/2009	Nodler for Congress	\$500

In an October 28, 2009 text message to Dr. Howard Weaver, the new Chairman of the Board (and the son of the former Chairman), Ms. Pletz requested that her stipend be processed, explaining that the stipends are authorized as income to her – “as they must be to be legal” – and must not be directed by the institution. Complaint Exhibit I. She further explains that the stipends are “used each year to garner support in the legislature” and that “[w]e are at a critical juncture re sponsors of the bill and pro tem and chair commitments.” *Id.* According to the complaint, prior to the October 2009 text message, Dr. Howard Weaver was not aware that Ms. Pletz’s leadership stipend may have been used to make political contributions. Complaint at 4.

Ms. Pletz’s November 2009 Report of the President indicates that she used her leadership stipend for political contributions each year it was received, through 2009:

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1 I devote the stipend portion of my compensation each year to
2 strategic support of legislative leadership in higher
3 education/medical education/health policy. This initiative is a
4 strong example of the effectiveness of KCUMB's community
5 investment and of the leadership stipend. As a 501C3
6 organization, the institution cannot lawfully make or direct
7 political contributions to individual candidates or legislators.
8 However, I have always believed that I had a personal
9 responsibility to support legislative leadership in higher education,
10 medical education, and health policy. Legislation incorporating
11 standards to ensure continuing high quality in Missouri's medical
12 education will be introduced early in this session, largely as a
13 result of KCUMB's leadership.
14

15 Complaint Exhibit H at 6. The University asserts that the current Board of Trustees was not
16 aware of the leadership stipend or how Ms. Pletz may have used it until the November 2009
17 Report of the President. *Id.* As discussed above, the University believes that, for at least part of
18 this period, Ms. Pletz forged the minutes of the Executive Committee meetings during which her
19 yearly stipend was purportedly approved and forwarded those minutes directly to the CFO,
20 without informing the Board of Trustees.

21 **B. University Submission and Pletz Response**

22 In September and October 2009, the University's Board of Trustees received confidential
23 correspondence about a number of issues regarding Ms. Pletz's compensation and business
24 expenses. Complaint at 1. The University retained outside counsel and appointed a Special
25 Committee of the Board of Trustees to conduct an internal investigation. Complaint at 1 and
26 Telephone Conversation with University Counsel.

27 By December 2009, the University's internal investigation uncovered documents
28 indicating that the University had paid Ms. Pletz stipends to reimburse her for both state and
29 federal contributions she would make to further the University's interests. *Id.* The Special
30 Committee presented an interim report regarding these documents and other issues relating to

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Ms. Pletz to the Board of Trustees on December 18, 2009. Although the investigation is ongoing, the Board decided to terminate Ms. Pletz's employment and report these campaign finance violations to the Commission. Complaint at 1, 4 and Telephone Conversation with University Counsel.

Ms. Pletz acknowledges receiving the leadership stipends and making federal contributions, but challenges the complaint on four grounds.

- The complaint does not meet the filing requirements set forth in 2 U.S.C. § 437g(a)(1) in that its signatory, Dr. Howard Weaver, swore only that he executed the complaint, and not to the contents of the complaint. Response at 1-2.
- Ms. Pletz also denies the connection between her leadership stipend and contribution amounts. While she received approximately \$1,128,000 in the form of leadership stipends over a ten-year period, she made only \$15,700 in federal political contributions. Response at 5. In some years, she received the stipend but did not make any federal contributions; in another year, she made federal contributions but did not receive a stipend. *Id.*
- Ms. Pletz also provided a sworn affidavit attesting that she:
 - (1) never directly or indirectly made political contributions on behalf of the University;
 - (2) never used University funds to make political contributions;
 - (3) was not obligated or expected to make political contributions as a condition of receiving the stipend; and
 - (4) made all political contributions of her own free will and to candidates or causes that she personally supported. Response Exhibit 2.
- This matter should be dismissed for policy reasons, as the maximum amount of contributions remaining within the five-year statute of limitations (\$6,200) constitutes *de minimis* activity. Response at 7.

Ms. Pletz acknowledges writing the September 26, 1999 memorandum, but argues that the memorandum is a correct statement of law, in that she may lawfully make personal contributions to political candidates and causes that she deems appropriate.² Response at 6.

² Ms. Pletz also asserts that the complaint cites no evidence that Dr. Jack Weaver ever received the memorandum. Response at 6.

1 Similarly, she argues that her statements in the November 2009 Report of the President and text
2 message to the Chairman were correct statements of law: while tax exempt organizations may
3 not make political contributions to candidates, individuals may make personal political
4 contributions.³ Response at 7. Ms. Pletz asserts that the University never carried out the 1999
5 plan to provide her with a \$42,000 "housing stipend," but, later in her response, reports that she
6 received a \$42,000 stipend in 1999. Response at 4, 6. Ms. Pletz offers no explanation of why
7 she suggested characterizing the sums that would be paid in consideration for political activity as
8 a housing stipend.

9 On August 16, 2010, the University filed an amended complaint identical to the original
10 complaint, except for a revised jurat explicitly attesting that the complainant has signed and
11 swears to the content of the complaint. Ms. Pletz filed a response to the amended complaint
12 maintaining that it still does not comply with 11 C.F.R. § 111.4. Specifically, she argues that the
13 jurat fails to explicitly state that the statements are made under the penalty of perjury and subject
14 to 18 U.S.C. § 1001, and the complaint fails to distinguish between statements based on personal
15 knowledge and statements based upon information and belief.

16 Subsequent to the filing of the original complaint and response, on March 22, 2010, the
17 University and Ms. Pletz filed suits against one another in Missouri Circuit Court, in which the
18 University claimed breach of fiduciary duty, fraud, breach of contract, and unjust enrichment,
19 and Ms. Pletz claimed wrongful termination.⁴

³ Ms. Pletz seems to question the authenticity of the October 28, 2009 text message, but admits that she sent Dr. Howard Weaver a text message in December 2009 requesting that he approve a disbursement of the leadership stipend for the purpose of influencing state legislation. Response at 7.

⁴ The University's suit contends that the September 26, 1999 memorandum was a false representation and a pretext for her to obtain additional compensation. Petition ¶ 24, *Kansas City University of Medicine and Biosciences v. Karen L. Pletz*, No. 1016-CV08485 (Mo. Cir. Ct. filed March 22, 2010).

C. Legal Analysis

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), corporations are prohibited from making contributions from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). A candidate, political committee, or other person is prohibited from knowingly accepting or receiving any corporate contribution. *Id.* Furthermore, it is unlawful for any officer or director of any corporation to consent to any contribution by the corporation. *Id.*

The Act also prohibits a person from making a contribution in the name of another person, knowingly permitting his name to be used to effect such a contribution, or knowingly accepting a contribution made by one person in the name of another. 2 U.S.C. § 441f. The Commission's regulations further prohibit knowingly helping or assisting any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii). Those regulations specifically explain that attributing a contribution to one person, when another person is the actual source of the funds used for the contribution, is an example of making a contribution in the name of another. *See* 11 C.F.R. § 110.4(b)(2)(ii).

The Act addresses violations of law that are knowing and willful. *See* 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John a Dromesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established by "proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Evidence does not have to show that the defendant had a specific knowledge of the regulations; an inference of a knowing

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1 and willful act may be drawn from the defendant's scheme to disguise the source of funds used
2 in illegal activities. *Id.* at 213-15.

3 1. Complaint Sufficiency

4 The Act requires that a complaint be signed and sworn to by the person filing the
5 complaint. 2 U.S.C. § 437g(a)(1). Commission regulations require that "[t]he *contents* of the
6 complaint shall be sworn to and signed in the presence of a notary public and shall be notarized."
7 11 C.F.R. § 111.4(b)(2)(emphasis added). Respondent argues that the complaint, as originally
8 filed, did not comply with the Commission's filing requirements because Complainant did not
9 explicitly swear to the contents of the complaint. The complaint, however, was later amended to
10 include the following statement by a notary public:

11 On this 5th day of August, 2010, before me personally appeared Howard D.
12 Weaver, D.O., duly sworn to be the person described herein, who executed the
13 foregoing instrument, acknowledged that he executed the same as his free act and
14 deed, and swore that the content of this complaint is true and correct to the best of
15 his knowledge.

16 Because the amended complaint is in compliance with the Act and 11 C.F.R. § 111.4(b)(2), any
17 alleged deficiency in the original filing has been rendered moot.

18 Respondent further argues that the amended complaint still does not comply with the
19 Commission's filing requirements because the Complainant has an independent obligation to
20 explicitly state that the complaint was made under penalty of perjury and subject to 18 U.S.C.
21 § 1001. There is, however, no requirement in the Commission's regulations that a complainant
22 explicitly state that a complaint has been made under penalty of perjury and subject to 18 U.S.C.
23 § 1001.

24 The Commission's regulations at 11 C.F.R. § 111.4(c) state that "[a]ll statements made in
25 a complaint *are* subject to the statutes governing perjury and to 18 U.S.C. 1001." 11 C.F.R.

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1 § 111.4(c)(emphasis added). However, this regulation simply gives notice to complainants that
2 all statements made in a complaint are automatically subject to the statutes governing perjury and
3 to 18 U.S.C. § 1001, irrespective of whether a complainant has explicitly sworn that effect.
4 Moreover, the notice to complainants provided in 11 C.F.R. § 111.4(c) that all statements made
5 in a complaint are automatically subject to the statutes governing perjury and to 18 U.S.C.
6 § 1001 is wholly independent of the requirement contained in 11 C.F.R. § 111.4(b)(2) that “[t]he
7 contents of [a] complaint [] be sworn to and signed in the presence of a notary public”
8 11 C.F.R. § 111.4(b)(2).

9 Finally, the Respondent argues that the complaint fails to “differentiate between
10 statements based upon personal knowledge and statements based upon information and belief,”
11 as required by 11 C.F.R. § 111.4(c). The Commission has reviewed the complaint and finds that
12 it is in substantial compliance with this legal requirement.

13 2. Karen L. Pletz

14 Based on the information provided in the University’s submissions and Ms. Pletz’s
15 response, it appears that Ms. Pletz violated 2 U.S.C. §§ 441b(a) and 441f. In her September 26,
16 1999 memorandum, Ms. Pletz requested that the University provide funds to offset political
17 expenses such as federal political contributions. Further, between 1999 and 2009, the University
18 provided her with a yearly stipend specifically to be used for political contributions. The
19 University’s *sua sponte* submission suggests that without the representation as to the need to
20 make political contributions to further the University’s interests, Ms. Pletz would not have
21 received the leadership stipend.

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1 a. Contributions in the Name of Another

2 Although Ms. Pletz claims that she did not make the contributions on behalf of the
3 University, the University provided Ms. Pletz with funds in response to her representation that
4 she would use them to make contributions in the University's interest, and Ms. Pletz then
5 preceeded to make contributions. Indeed, the University's internal investigation concluded that
6 the stipend was used to make contributions. Further, Ms. Pletz's Report of the President actually
7 states that, due to her contributions, certain legislation would be introduced "largely as a result of
8 KCUMB's leadership." Thus, Ms. Pletz made federal contributions with the stipend, making the
9 University the true source of contributions.⁵ Therefore, the Commission finds reason to believe
10 that Karen L. Pletz violated 2 U.S.C. §§ 441b(a) and 441f.

11 b. Knowing and Willful Investigation

12 The information presented raises the question of whether Ms. Pletz's violation of the Act
13 was knowing and willful. First, it appears that Ms. Pletz had knowledge of the legal prohibition
14 on corporate contributions. In both the September 26, 1999 memorandum and the November
15 2009 Report of the President, Ms. Pletz clearly states her awareness that the University cannot
16 legally make contributions to individual candidates due to its corporate status, and proposes that
17 the University circumvent this restriction by giving her a stipend to make the contributions.

18 Second, Ms. Pletz's recommendation that her 1999 salary increase be falsely labeled as a
19 "housing allowance" suggests an attempt to conceal the nature of the funds and knowledge that
20 the scheme was illegal. Further, the allegation that Ms. Pletz forged Executive Committee

⁵ While the University's civil suit contends that Ms. Pletz requested all or part of the stipend as a false pretext for additional compensation, this is not inconsistent with the conclusion that Ms. Pletz used the stipend to make contributions for the University. The two purposes are not mutually exclusive: Ms. Pletz could have used a portion of the stipend for political contributions and converted the other portion to her personal use.

1 minutes further supports a scheme of concealment. Creating a false record indicates an attempt
2 to conceal the nature of an action and knowledge that the action is illegal. *See, e.g.*, MUR 5398
3 (Lifecare Holdings, Inc.) (Commission found knowing and willful reason to believe against
4 respondents who reimbursed contributions through expense reports, bonus payments, and
5 retroactive salary adjustments).

6 However, Ms. Pletz's response and the language of her October 2009 text message argue
7 her belief that the conduct was legal because the University did not direct her contributions or
8 require her to report back, and she did not use the entire stipend for contributions. Further, Ms.
9 Pletz's effort to conceal her actions may have been directed towards limits on executive
10 compensation associated with the University's tax-exempt status instead of concealing the source
11 of the contributions.⁶ As there is information in the record which could be viewed as suggesting
12 that the violations were knowing and willful, an investigation is needed to resolve this issue.

⁶ Ms. Pletz notes that her proposed salary increase would be taxable to her, *see* Complaint Exhibit A ¶ 5, indicating that she was not concealing the funds to avoid personal tax liability. Additionally, her use of the term "legal" in the October 2009 text message suggests a skirting of the Act more than the tax code, as the contributions might risk the University's tax-exempt status but would not be considered "illegal" under the Internal Revenue Code. *See* 26 U.S.C. § 501(c)(3); *see also* "The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations," Internal Revenue Service, <http://www.irs.gov/charities/charitable/article/0,,id=163395,00.html> (last visited April 27, 2010). However, it is possible that Ms. Pletz informally used the term "legal" in reference to permissible activity for tax-exempt organizations.